

1946

*Present : Nagalingam A.J.*

MOHOTTI APPUHAMY, Appellant, and BOWELA, Respondent.

1,341—*M. C. Avissawella, 35,454.*

*Firearms—Possession of gun without licence—Plea of accused that another person holds licence—Validity of such defence—Firearms Ordinance (Cap. 139), s. 22 (1).*

A person cannot be convicted of having had in his possession a gun in breach of section 22 (1) of the Firearms Ordinance if he proves that some other person is duly licensed to possess the gun.

**A** PPEAL against a conviction from the Magistrate's Court, Avissawella.

*M. E. Dharmawardene, for the accused, appellant.*

*J. G. T. Weeraratne, C.C., for the Attorney-General.*

December 12, 1946. NAGALINGAM A.J.—

The accused in this case has been convicted of having had in his possession a single-barrel muzzle-loading gun in breach of section 22 (1) of Chapter 139 of the Legislative Enactments of Ceylon and sentenced to pay a fine of Rs. 20. The point of law taken on behalf of the accused is that where an accused proves that some other person was the possessor of the gun, the accused could not be charged with having been in possession although other offences such as having had the custody or having used the gun may appropriately form the subject of other charges.

Section 29 of the Firearms Ordinance no doubt states that the occupier of any house in which a gun shall be found shall for the purposes of the Ordinance be deemed to be the possessor of the gun. This section is subject to two qualifications one of which is that if the accused proves

that some other person is the possessor of the gun then the presumption is rebutted. In this case the accused called the licensed owner of the gun, one Romanis, who gave evidence of the fact that he was duly licensed to possess the gun. There has been no cross-examination of this witness but the learned Magistrate rejected the evidence of Romanis on the ground that he did not believe that he had left the gun with the accused only that morning because as he says he had to go to the dispensary.

While it may be correct to take the view that the gun had been left in the house of the accused for a longer period of time, nevertheless the accused cannot be found guilty if he establishes that some other person was the possessor of the gun; the accused has called Romanis to establish this fact. The learned Magistrate does not appear to have had his attention drawn to this aspect of the matter. I therefore set aside the conviction and acquit the accused.

*Appeal allowed.*

